

## Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** John Stufflebean  
Jennifer Maguire

**SUBJECT:** SEE BELOW

**DATE:** 03-29-10

Approved

Date

4/2/10

**SUBJECT: COOPERATIVE FUNDING AGREEMENT WITH THE US BUREAU OF RECLAMATION FOR DESIGN AND CONSTRUCTION OF SOUTH BAY WATER RECYCLING**

### RECOMMENDATION

1. Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with U.S. Bureau of Reclamation to accept \$6.460 million in grant funds, of which \$6.310 million will be for design and construction of South Bay Water Recycling Phase 1C facilities, and \$150,000 will be retained by the Bureau of Reclamation for administrative and other costs.
2. Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the San José-Santa Clara Treatment Plant Capital Fund:
  - a. Establish an estimate for Recovery Act – Federal Revenue in the amount of \$1,875,000;
  - b. Establish an appropriation to the Environmental Services Department for Recovery Act – South Bay Water Recycling Phase IC in the amount of \$6,310,000.
  - c. Decrease the appropriation to the Environmental Services Department for Revised South Bay Action Plan - SBWR Extension by \$4,435,000.

### OUTCOME

Approval of a Cooperative Funding Agreement with the US Bureau of Reclamation (Reclamation) will allow the City accept a reimbursable federal grant funding of \$6,460,000 to complete design and construction of the final South Bay Water Recycling (SBWR) Phase 2 facilities with an estimated cost of \$14,777,000 through the 2009 American Recovery and Reinvestment Act (ARRA) as administered by the US Bureau of Reclamation Title XVI program. Of this \$6.46 million, \$150,000 will be retained by Reclamation for administrative costs.

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### EXECUTIVE SUMMARY

The recommended agreement with the U.S. Bureau of Reclamation will allow the City to receive reimbursable proceeds of up to \$6.31 million from the 2009 American Recovery and Reinvestment Act (ARRA) to construct \$14.78 million worth of recycled water projects in the Cities of San José and Santa Clara. The \$6.46 million grant agreement amount includes payment of \$3.35 million for which the City is eligible for reimbursement under a grant originally awarded in 1995. Including the funding that was authorized by the 1995 grant agreement, but never appropriated by Congress, the reimbursement for the projects covered by the grant increases from 25% to 43% of the project cost, but requires the funds to be used to construct new recycled water projects. The projects covered by the grant agreement will be constructed using \$14.412 million from existing South Bay Action Plan appropriations and a \$365,000 contribution from San Jose State University. After auditable compliance with all ARRA regulations and reimbursement, approximately \$6.31 million will be reimbursed to the San José/Santa Clara Water Pollution Control Plant Capital Fund, while the balance of the grant (\$150,000) will be retained by Reclamation for administrative and other costs. Constructing these projects will add approximately 9 miles to the SBWR distribution system, initially increasing deliveries of recycled water by over 1400 acre-feet per year (AFY), and raising revenues by up to \$300,000 per year with an additional 600 AFY of reuse potential.

### BACKGROUND

In September 1993, as the administering agency of the San José/Santa Clara Water Pollution Control Plant (Plant), the San José City Council authorized design and construction of a project to divert up to 15 million gallons per day (mgd) of treated effluent from the south Bay during the summer by providing nonpotable recycled water to customers in Milpitas, Santa Clara and San José. Between 1993 and 1999 the City built SBWR Phase 1A facilities at a cost of approximately \$140 million including four pump stations, a reservoir, and over sixty miles of pipeline. In June 2000, the Council approved an additional \$100 million for the "Revised South Bay Action Plan," including \$82.5 million in the 2001-2005 Capital Budget to expand the SBWR system and increase its reliability. Between 2000 and 2009, at a cost of approximately \$83 million, the City built SBWR Phase 1B facilities including two reservoirs and more than 40 miles of recycled water pipeline, as well as various reliability improvements. Between the Phase 1A and 1B programs, approximately \$17 million in authorized funding remains available for construction of additional water recycling facilities.

In September 1995 the City and Reclamation executed Cooperative Agreement 5-FG-20-12650 allowing the City to receive grant funding through the USBR Title XVI Program as authorized by Section 1607, "San José Area Reclamation and Reuse Program" of the of the federal "Reclamation Projects Authorization and Adjustment Act of 1992" (PL102-575). This Cooperative Agreement allowed Reclamation to reimburse the City up to \$35 million, representing a federal share of 25% of the estimated \$140 million cost of the Phase 1A project. The Agreement was originally funded with a Congressional appropriation of \$1.75 million, and has been modified annually as additional funds have been appropriated. To date the City has received \$31.6 million from Reclamation, leaving an unfunded obligation of about \$3.35 million.

In March 2009 Reclamation announced a competitive grant program funded by a new appropriation from the American Recovery and Reinvestment Act of 2009 (ARRA). The competition was open only to agencies whose projects were already authorized under Title XVI, and included a special provision that granted a greater federal share (over 25%) to agencies like San José that had not yet been fully reimbursed for previously completed projects. On July 1, 2009 the City was notified that Reclamation was prepared to award \$6.46 million in ARRA grant funding towards construction of up to \$26 million in proposed recycled water pipeline extensions and related improvements to increase the amount of recycled water supplied through the SBWR system.

On July 23, 2009 the City Manager submitted SF-424, "Application for Federal Assistance for Phase 1C - San José Area Water Reclamation and Reuse Program" requesting an award of \$6.46 million in federal stimulus funds towards design and construction of \$14.78 million in South Bay Water Recycling pipeline extensions and related facilities. This request would allow the City to receive the remaining \$3.35 million reimbursed through the construction of Phase 1C ARRA projects (over and above the 25% federal share, essentially reducing the time for reimbursement) in lieu of receiving the remaining reimbursement for Phase 1A projects through the current annual Congressional appropriations process, which has been lengthy.

The following is a list of projects included in the application for federal funding, showing the local and federal shares of the total project cost:

Project Name	Description	Cost (\$M)
San José Airport Extension	Approx. 4,500 LF of 12-inch pipe to serve 75 AFY to Mineta-San José International Airport	\$1.720
SBWR Laterals and Garden Improvements	Approx. 1,500 LF of 6-12-in. pipe to serve 100 AFY to civic buildings, a community garden, and access points throughout the service area.	\$0.980
San José School Extensions	Approx. 1,800 LF of 6-inch pipe to serve 75 AFY to four schools in central and south San José.	\$1.140
SJSU Improvements	Approx. 500 LF of 6-8-in pipe to serve up to 150 AFY to SJSU campus for irrigation and indoor use.	\$0.787
Santa Clara Central Park	Approx. 12,000 LF of 8-16 in. pipe to serve 115 AFY to 52-acre Santa Clara Central Park and adjacent customers	\$4.200
Santa Clara Industrial 1	Approx. 3,000 LF of 8-12-inch pipe to serve 300 AFY for cooling and irrigation at data centers and other industrial sites.	\$0.750
Santa Clara Industrial 2	Approx. 6,500 LF of 12-in pipe to serve 140 AFY to Santa Clara industrial sites for cooling and irrigation.	\$1.900
Santa Clara Industrial 3	Approx. 14,000 LF of 12-inch diameter pipe to serve 500 AFY to Santa Clara industrial sites for cooling and irrigation.	\$3.300
<b>Cost of Proposed Projects to be Completed for Grant Award</b>		<b>14.777</b>
Proposed San José State University Share (2%)		\$0.365
Proposed San José Share (55%)		8.102
Proposed Federal ARRA Share (43%)		6.310

## ANALYSIS

### *Cooperative Funding Agreement with US Bureau of Reclamation*

According to the program solicitation, the purpose of the ARRA grant program is "to quickly and prudently commence activities that preserve and create jobs and to promote economic recovery, and to invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits." ARRA also required that Reclamation provide at least \$126 million in Federal funds "for water reclamation and reuse projects" authorized under its Title XVI program.

By participating in the ARRA grant program and executing a Cooperative Funding Agreement with Reclamation, the City and its tributary partners agree to invest in new water recycling facilities with an estimated cost of \$14.777 million. The projects are projected to initially increase recycled water use by up to 1,400 acre-feet per year, increasing revenues from the SBWR system by more than \$300,000 per year, with the potential to add another 600 AFY. Other conditions associated with participation in the ARRA grant program include the following:

- Compliance with ARRA program features including Davis-Bacon wage rates and "Buy America" provisions;
- Appropriate documentation of all project costs as well as estimation of jobs created as a result of ARRA-sponsored activities; and
- Completion of all projects submitted for reimbursement by September 30, 2011.

As an added incentive to local agencies to participate in the ARRA grant program, Reclamation has also included a provision that "the project sponsor may request Federal funds greater than 25 percent for the proposed activity as long as the overall Federal cost share does not exceed 25 percent of incurred expenses." The benefit of this provision is that the City can receive reimbursement funds more quickly than would otherwise be the case. Since the origin of the Title XVI program in 1992, many project sponsors (including San José) have not been fully reimbursed for past project expenses. For example, in the fifteen years since receiving its first federal appropriation in 1995, the City has received a total of \$31,650,300 towards the \$35 million federal share for an average of about \$2 million per year. However, in five of the past ten years the City has received less than \$1 million per year, and the 2010-2011 federal budget includes only \$260,000 in reimbursement funds. As a result, even though reimbursements received through the normal process may be used without restriction, staff recommends that the City build the proposed projects and accept the remaining \$3.35 million from ARRA appropriations all at once rather than wait to receive the funds through annual appropriations.

It should also be noted that staff has recently applied for reimbursement for the 25% federal share of the \$82.8 million cost of SBWR Phase 1B facilities. Once a Cooperative Funding Agreement for the \$20.7 million federal share of that project is executed the City would be eligible to receive up to 100% federal funding for construction of new projects in lieu of reimbursement, should more ARRA funding become available.

### *Appropriations Actions*

#### Reimbursements to the San José/Santa Clara Water Pollution Control Plant Capital Fund

Approval of the recommended appropriations actions will allow the City to accept a \$6.46 million grant from the U.S. Bureau of Reclamation through the Title XVI program for a construction program estimated at \$14.8 million. After auditable compliance with all ARRA regulations and submittal of required invoices to Reclamation, the City will receive up to \$6.31 million in reimbursement funds, with the balance (\$150,000) retained by Reclamation for administrative costs. With this recommended action, \$1,875,000 of grant funds is recognized. Through future budget processes, the receipts of the grant balance of \$4,435,000 will be recognized.

Reimbursement funds received by the City will be returned to the San José/Santa Clara Water Pollution Control Plant Capital Fund. It should be noted that to comply with ARRA provisions requiring that funds not be comingled, all revenue and expenditure transactions will be booked to the ARRA Water Program/SJ Area Water Reclamation & Reuse Memo Fund (Fund 561), which will be established as a Memo Fund to the San José/Santa Clara Water Pollution Control Plant Capital Fund. Phase 1C contracts currently in the San José/Santa Clara Water Pollution Control Plant Capital Fund may be liquidated and re-encumbered in the new memo fund.

#### EVALUATION AND FOLLOW-UP

Upon Council adoption of the proposed resolutions, the City Manager will negotiate and execute a Cooperative Agreement with the US Bureau of Reclamation to reimburse the City up to \$6.35 million and City staff will begin design and construction of up to \$14.8 million in recycled water system improvements. Consistent with the terms of the proposed Cooperative Agreement, the City will provide Reclamation with quarterly updates of construction progress, and new customer connections will be noted in regular SBWR performance reports and in updates to the City's Green Vision Plan.

#### PUBLIC OUTREACH/INTEREST

- ☒ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. (Required: Website Posting)
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. (Required: E-mail and Website Posting)
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

During the summer and fall of 2000, the cities of San José, Santa Clara, and Milpitas held public meetings on the local use of recycled water. Also, representatives of various stakeholder groups

(e.g. Sierra Club, League of Women Voters, Silicon Valley Chamber of Commerce) met regularly in 1998 and 1999 to create the present plans for extension of the recycled water systems. In addition, staff members from the cities of San José (San José Municipal Water), Santa Clara and Milpitas, and San José Water Company have attended monthly meetings to review South Bay Water Recycling planning and operations.

### **COORDINATION**

This memorandum has been coordinated with the Attorney's Office, Risk Management, the Planning Department and Public Works, and is scheduled to be heard at the April 8, 2010 Treatment Plant Advisory Committee (TPAC) meeting.

### **COST IMPLICATIONS**

1. COST OF PROPOSED PROJECTS FOR GRANT AWARD:	<b>\$14,777,000</b>
Project Delivery	1,749,000
Construction	13,028,000
<b>Total Project Costs</b>	<b>\$14,777,000</b>
<b>Funding Available:</b>	
Total Current Year Funding Available *	\$8,102,000
<b>Grant Funding Available</b>	<b>\$6,310,000</b>
Proposed Contribution from San José State University	\$365,000
<b>Total Funding Available:</b>	<b>\$14,777,000</b>

\* This funding is available in the Revised South Bay Action Plan - SBWR Extension appropriation.

2. SOURCE OF FUNDING: San José/Santa Clara Water Pollution Control Plant Capital Fund
3. OPERATING COST: Construction of these projects is not expected to noticeably increase operating costs of SBWR. The proposed project includes approximately seven miles of distribution pipe will be maintained under an existing Operations and Maintenance Agreement with the City of Santa Clara, and no additional funds for operations and maintenance are anticipated to be added to that Agreement as a result of this construction. Distribution of an additional 1,400 acre-feet of recycled water per year through the SBWR system should increase annual revenues by approximately \$300,000.

### **FISCAL POLICY ALIGNMENT**

In accordance with the Mayor's prescribed budget strategy, the tasks under this agreement will focus on the protection of a vital core service, emphasizing expenditures that improve reliability of the South Bay Water Recycling system and increasing the "recycling and beneficial reuse of

wastewater.” The project will help stimulate construction spending in our local economy and supports the City’s Green Vision Goal #6, “Recycle or beneficially reuse 100% of wastewater.”

### **BUDGET REFERENCE**

The recommended budget actions will increase the revenue estimate in the San José/Santa Clara Water Pollution Control Plant Capital Fund for Recovery Act – Federal Revenue by \$1,875,000. This amount represents the reimbursement the Fund will receive from the Bureau in 2009-2010. The remainder of the reimbursement (\$4,435,000) will be received by the Fund in future years, as more projects eligible for reimbursement are completed. As recommended, the \$4,435,000 balance will be advanced by the Revised South Bay Action Plan – SBWR Extension appropriation, until reimbursement is received from Reclamation. The Revised South Bay Action Plan – SBWR Extension appropriation currently has \$17,642,000, so the recommended budget action will reduce it to \$13,207,000.

In addition to the funding described above, funding available to support production and distribution of recycled water includes revenue received from the Santa Clara Valley Water District. \$918,000 was received in 2009-2010. The recently approved Recycled Water Facilities Integration Agreement with the Santa Clara Valley Water District further provides for \$1 million in funding to be available on or before August 1, 2010 to support expanding the usage of water produced by SBWR.

The recommended budget actions also establish a new appropriation in the San José/Santa Clara Water Pollution Control Plant Capital Fund for Recovery Act – South Bay Water Recycling Phase IC in the amount of \$6,310,000 for construction projects which will receive the Federal reimbursement. Tracking the costs of these projects and associated revenue reimbursements separately is a requirement of the ARRA provisions.

Fund #	Appn #	Appn. Name	Total Appn.	Recommended Action	Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
512	6589	Revised South Bay Action Plan - SBWR Extension	\$17,642,000	\$4,435,000	V-150	11/17/2009, Ord. No. 28669

### **CEQA**

#### **CEQA for City of San Jose Actions:**

Resolution No. 64667 (PP91-090) and Addenda thereto:

San José Airport Extension: Resolution 64667, PP10-020

SBWR Laterals and Garden Improvements: Resolution 64667 and Addendum to Mitigated Negative Declaration, PP10-019

San José School Extensions: Resolution 64667, PP10-018

SJSU Improvements: Resolution to be adopted

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CEQA done by City of Santa Clara for City of Santa Clara Actions:

Santa Clara Central Park: PLN 2009-07751: CEQ 2009-01085.

Santa Clara Industrial 1: PLN 2009-07749, CEQ 2009-01083

Santa Clara Industrial 2: PLN 2009-07616, CEQ 2009-01080

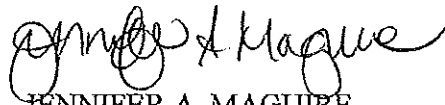
Santa Clara Industrial 3A: PLN2009-07929 and CEQ2009-01093

NEPA:

In addition to CEQA, all projects have been reviewed by the US Bureau of Reclamation for compliance with the National Environmental Policy Act (NEPA). As the lead agency, Reclamation has issued a Finding of No Significant Impact (FONSI) for each of the proposed projects.



JOHN STUFFLEBEAN  
Director, Environmental Services

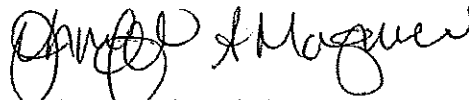


JENNIFER A. MAGUIRE  
Budget Director

I hereby certify that there will be available for appropriation in the designated fund and in the amount listed below in 2009-2010 moneys in excess of those heretofore appropriated there from:

San José/Santa Clara Treatment Plant Capital Fund (512)

\$1,875,000



JENNIFER A. MAGUIRE  
Budget Director

For questions, please contact Mansour Nasser, Deputy Director, at (408) 277-2558.